REMARKS

Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claims 25 to 55 are pending in the present application. Claims 1 to 24 were previously cancelled without prejudice or disclaimer of the subject matter claimed therein. Claims 25 and 55 have been amended. No new matter is added.

Rejections Under 35 U.S.C. § 103

Claims 25-26 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,614,763 of Kikuchi et al. ("Kikuchi"). Claims 25 to 52 and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2003/0126256 to Cruickshank et al. ("Cruickshank"). Claims 53 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cruickshank and Kikuchi in view of Official Notice.

Kikuchi describes an apparatus for measuring network performance where measurement packets are sent at equi-intervals from a sending unit into a network path. A reception unit measures the packet transmission time to estimate an available bandwidth of the network. Kikuchi, Abstract. Kikuchi describes that a measurement packet sending unit 16 sends a measurement packet 24 at equi-intervals toward a measurement packet reception unit 18. Kikuchi, column 8, lines 5-7; lines 33-36; Figs. 2-3. Kikuchi, column 12, line 42 through column 13, line 25, describes that a measurement packet sending speed X has a relation with the parameter Q. Kikuchi describes that the packet sending speed (in bits-per-second) is varied to iteratively check network performance. Kikuchi, column 12, lines 61-65. The packet sending

speed quantifies the rate at which the packet contents are transmitted, not an interval at which the packets themselves are sent. Kikuchi describes that the packet sending speed X (bps) can be estimated using a bisection method, where a P-bit measurement packet is output at a packet output speed X/P (pps). Column 13, lines 4-5. The packet output speed X/P (pps) is indicative of the number of packets output per unit time. Kikuchi, column 13, lines 39-40. Kikuchi fails to disclose, or suggest, that the packet output speed is adjustable between packets.

Cruickshank describes a system for use with a broadband network to obtain metrics of performance of a portion of the network. *See* Cruickshank, ¶ 0005. Cruickshank describes a data collector controller 46 which obtains data from a network 12 by polling devices on the network. The collector 46 obtains data periodically according to predetermined time intervals according to what features of the network are reflected in the corresponding obtained data. *See* Cruickshank, ¶ 0030. Cruickshank also describes that raw data may be sampled frequently, e.g., every one minute or every 15 minutes. Cruickshank, ¶ 0036. Cruickshank describes that "[t]he sample intervals apply to the intervals for which the data are collected." *See* Cruickshank, ¶ 0047.

Independent claim 25 of the present application has now been amended to recite "sending measurement packets from a first measuring computer to a second measuring computer over a measurement path with an adjusted time distribution between the measurement packets so as to determine first status information regarding the measurement path." Support for the amendment may be found, for example, at ¶ 0047 of the specification. It is respectfully submitted that neither Kikuchi nor Cruickshank, singly or in combination, teaches or suggests sending

measurement packets with a distribution in time that is adjusted between packets, as recited in independent claim 25. In contrast, Kikuchi merely describes that the speed at which packets are sent (sending speed X) is varied, however the number of packets output per unit time (output speed X/P) is at equi-intervals. Kikuchi, column 8, lines 5-7; column 12, lines 61-65; and column 13, lines 39-40. Kikuchi fails to describe, or disclose, adjusting the distribution in time between packets, as recited. Cruickshank merely describes collecting raw data at predetermined time intervals by periodically polling devices on the network. *See* Cruickshank, ¶¶ 0030, 36. Accordingly, neither Kikuchi nor Cruickshank singly, or in combination to the extent proper, could render independent claim 25, or any of its dependent claims 26-55, obvious.

Reconsideration and withdrawal of the respective rejections of claims 25 to 55 under 35 U.S.C. §103(a) based on respective combinations of Kikuchi and Cruickshank is respectfully requested.

CONCLUSION

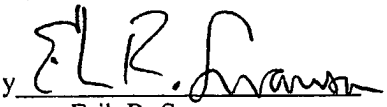
In view of the foregoing it is believed that claims 25 to 55 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

Dated: April 8, 2009

Respectfully submitted,

By 

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